

In the Matter of License No. 64254 and Merchant Mariner's  
Document No. Z-78133-D1  
Issued to: WILLIAM T. BRIGGS

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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WILLIAM T. BRIGGS

In the Matter of License No. 64254 and Merchant Mariner's  
Document No. Z-78133-D1  
Issued to: WILLIAM T. BRIGGS

Merchant Mariner's Document No. Z-195076-D3  
Issued to: ALBERT FUENTES

Merchant Mariner's Document No. Z-291048  
Issued to: STEPHANOS GLAROS

Merchant Mariner's Document No. Z-920659-D1  
Issued to: JAMES W. STALEY

This joint appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 22 May, 1952, and as the result of a hearing in joinder, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended the above listed Merchant Mariner's Documents, issued to the respective Appellants, upon finding each of them guilty of misconduct based upon individual specifications alleging in substance that while serving on board the American SS OREMAR under authority of the documents above described, on or about 10 May, 1952, while said vessel was at Puerto de Hierro, Venezuela, they were wrongfully absent from the vessel and went ashore in a foreign port without proper authority. Briggs was serving as a Quartermaster; Fuentes as a Wiper; Glaros as Utility; and Staley as an Ordinary seaman.

At the hearing, Appellants were given a full explanation of the nature of the proceedings, the rights to which they were entitled and the possible results of the hearing. The four Appellants were represented by an attorney of their own selection and they entered pleas of "not guilty" to the charge and specification proffered against each of them.

Thereupon, the Investigating Officer and counsel made their opening statements. Counsel stated that all of the Appellants had gone ashore but that almost the entire crew had left the ship and all of the Appellants understood that shore leave had been granted to the crew. The Investigating Officer then introduced in evidence the testimony of the Master, Chief Mate and Second Mate of the OREMAR.

After the Examiner had denied a motion to dismiss the charges on the ground that a prima facie case had not been made out against any of the Appellants, two of the present Appellants testified under oath. A fifth person charged, against whom an identical specification was found proved at this hearing, also testified under oath.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given the parties an opportunity to submit proposed findings and conclusions, the Examiner announced identical decisions as to each of the Appellants. He concluded that the charge had been proved by proof of the specification as to each Appellant and entered the order suspending their respective Merchant Mariner's Documents, and all other licenses, certificates of service and documents issued to them by the United States Coast Guard or its predecessor authority, for a period of twenty days from 19 May, 1952.

From that order, this joint appeal has been taken, and it is urged that:

1. The cases are of such trivial importance that no proceedings should have been instituted by the Investigating Officer. All of the Appellants were ashore but they acted in good faith because they thought the order of the Master had been countermanded after the Captain of the Port had said the crew could go ashore.

2. The decision of the Examiner is not supported by reliable, probative and substantial evidence.
3. The Examiner made erroneous rulings as to the admission of evidence, and on the points of law raised by counsel for the persons charged.

APPEARANCES: Sol C. Berenholtz, Esq. and Solomon Kaplan, Esq., of Baltimore, Maryland, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

#### FINDINGS OF FACT

On 10 May, 1952, Appellants were serving in the above capacities on board the American SS OREMAR and acting under authority of their respective Merchant Mariner's Documents.

Shortly after the ship tied up at a dock in Puerto de Hierro, Venezuela, at about 1200 on this date, the Captain of the Port boarded the vessel and informed the Master that no shore leave should be granted to the crew because of "possible trouble." A notice stating that there would be no shore leave was posted on the sailing board at the gangway. A notice that sailing time was 2130 was also posted. The Captain of the Port returned at about 1300 and stated that the crew could go on shore leave. This information was conveyed to the Master by the Mate on watch but the Master failed to countermand his original order which remained posted at the gangway. Nevertheless, each of the Appellants went ashore at some time in the afternoon but returned aboard before sailing time. The record does not disclose whether any of the Appellants were logged for their conduct or what reason the Master had for not changing his original order.

Previous disciplinary action consists of a single offense for either failure to join or absence without leave against each one of the four Appellants.

#### OPINION

It is my opinion that the charge is supported by reliable, probative and substantial evidence and that Appellants did go ashore without proper authority. Regardless of the fact that the majority of the crew went ashore, it is not believed that Appellants acted in good faith when they assumed that the Master's order had been cancelled. The "no leave" order was posted at the gangway and it should have been obeyed unless, and until, it was definitely established that the Master had rescinded it. But due to the apparently confusing situation created by the contradictory statements made by the Captain of the Port to some members of the crew, the order of the Examiner dated 22 May, 1952, is modified as follows:

#### ORDER

That each of the Appellants is hereby admonished for their conduct which was a breach of shipboard discipline, in that they went ashore in a foreign port without having obtained proper authority.

As so MODIFIED, the Examiner's Order dated 22 May, 1952, is AFFIRMED.

A. C. Richmond  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 28th day of November, 1952.